

**Office of Chief Counsel
Internal Revenue Service
memorandum**

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to: Russ. J. Thieleman
(Program Manager, Servicewide Interest Program)

from: Blaise G. Dusenberry
Senior Technician Reviewer
(Procedure & Administration)

subject: Request for Counsel Advice - Credit Interest on Overpayments

This memorandum responds to your request for legal advice. This advice may not be used or cited as precedent.

ISSUE

How is interest under section 6611 of the Internal Revenue Code computed on a refund paid within 45 days of the date of a claim for refund or amended return?

CONCLUSION

Interest should be paid in the example described below from the due date of the return to the date of the claim.

FACTS

You have asked how interest is to be computed on a refund paid within 45 days of a claim for refund or amended return. Specifically, you question whether the Service's administrative back-off period (discussed more fully below) applies when computing interest on the refund.

Our conclusion is best explained by way of example. Assume a taxpayer timely filed a 2005 income tax return reflecting a tax liability of \$75,000, which was paid through withholding. On August 20, 2006, the taxpayer filed an amended return on which the taxpayer claimed a refund of \$20,000. The overpayment was refunded to the taxpayer on September 12, 2006, within 45 days of the date of the amended return.

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LAW AND ANALYSIS

Section 6611 provides for the payment of interest on an overpayment of tax from the date of the overpayment at the overpayment rate established under section 6621.

Section 6511(b)(2) provides that in the case of a refund, interest will be paid from the date of an overpayment to a date to be determined by the Secretary preceding the date of the refund check by not more than 30 days. The thirty-day period allows the IRS to compute the interest due at a fixed point in time and then process the refund check without additional interest accruing before the taxpayer receives the check. See Godfrey v. United States, 997 F.2d 335 (1993).

Section 6611(e)(2) provides that in the case of a refund after a claim for refund, if the Service refunds the overpayment within 45 days of the date the claim is filed, no interest shall be allowed on the overpayment from the date the claim is filed to the date the refund is made.

Prior to the enactment of section 6611(e) there was no interest-free period, as we know it today. Section 6611(b) required the Service to calculate overpayment interest to a date no more than 30 days preceding the date of the refund check. The 30-day back-off period was burdensome to the Service during peak filing season, as it required the Service to interrupt the refund process in order to compute small amounts of additional interest if it was unable to issue the refund within 30 days. For example, if a return was due and filed on March 15, and the Service issued a refund check dated April 15, the Service would have to calculate overpayment interest from March 15 to March 16 because interest would be payable starting the day after the due date of the return, and 30 days preceding the date of the refund check would be March 16. To alleviate this burden, the Service asked that the 30-day back-off period be replaced with a 60-day period. Congress agreed that the 30-day period was not long enough, however, instead of enacting a 60-day back-off period, it enacted section 6611(e), giving the Service a 45-day interest-free period for overpayments of income tax refunded within 45 days after the due date of the return, without regard to extensions. See Memorandum of Material Changes in Existing Law Incorporated in the Draft of Administrative Provisions, 1954 Code Advisory Group, chapter 107, page 3; Internal Revenue Code of 1954, A Bill to Revise the Internal Revenue Laws of the United States, H.R. Rep. No. 83-1337, at A418 (1954); Internal Revenue Code of 1954, A Bill to Revise the Internal Revenue Laws of the United States, S. Rep. No. 83-1622, at 590 (1954).

Because the Service refunded the \$20,000 within 45 days of the date of the claim, interest is not allowed from the date the claim is filed until the date the refund is made. Since the date of overpayment in this example is April 15, 2006, interest will accrue from April 15, 2006, to August 20, 2006.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS



This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please call 202-622-4910 if you have any further questions.

By: _____
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